



September 1, 2023

Katie Merritt
Director of Policy and Planning
Office of the Insurance Commissioner
1326 Strawberry Square
Harrisburg, PA 17120

Re: Commonwealth Essential Health Benefits Benchmark Plan—Public Comment Period; Notice 2023-14

Dear Director Merritt:

Thank you for the opportunity to provide comments to inform future decision-making regarding the essential health benefits (EHB) benchmark plan in the Commonwealth of Pennsylvania.

The undersigned organizations represent thousands of patients and consumers facing serious, acute and chronic health conditions across the Commonwealth. These individuals rely on the patient protections provided by the Affordable Care Act (ACA), including a robust and sensible EHB package. Our organizations have a unique perspective on what patients need to prevent disease, cure illness, and manage chronic health conditions. Our breadth enables us to draw upon a wealth of knowledge and expertise that can be an invaluable resource in this discussion.

The ACA's standards obligating insurers to cover all essential health benefits are of fundamental importance to the patients we represent. We thank the Department for its commitment to ensuring access to comprehensive coverage and preventing discrimination in benefit design. We recommend the Department think broadly about its authority under current federal guidelines and consider recent actions taken by other states to update and strengthen EHB standards to ensure plans cover all of the benefits and services patients need. We are therefore pleased the Department is seeking comments on the EHB benchmarking process, and we ask that you consider the following comments in response to the Bulletin.

Federal rules governing the EHB benchmarking process afford states a significant amount of flexibility and choice when it comes to designing the EHB package. Within the past few years, a number of states have utilized these flexibilities to address the needs of their specific populations, promote equitable

access to certain benefits, and reduce health disparities.¹ We encourage Pennsylvania to follow suit by ensuring that the EHB benchmark utilizes the actuarial generosity of the *most* generous comparator plan. That may not be the existing benchmark plan. For example, according to the results of an actuarial analysis conducted during Colorado’s EHB benchmarking process, the existing benchmark saddled consumers with significantly diminished value and a deficient set of benefits compared to what was available to the state through alternatives such as one of the FEHBP plans.²

If Pennsylvania finds that alternative available comparator plans provide flexibility in designing a more appropriate EHB package, or if the Commonwealth finds that additional benefits could or should be added in order to bring the EHB package into alignment with other federal requirements such as the Mental Health Parity and Addiction Equity Act (MHPAEA) and Section 1557 antidiscrimination provisions, we suggest several options for the Department to consider.

We urge the Commonwealth to carefully safeguard access to preventive services, particularly those services that receive an “A” or “B” designation from the United States Preventive Services Task Force (USPSTF). In addition to their critical role in early detection, diagnosis, and treatment of medical conditions, many preventive services comprise some of the more cost-effective and cost-saving medical care available to consumers.³ Research has also shown that coverage for preventive services can help to close racial and ethnic inequities in care access.⁴ Any benchmark plan must provide maximal ongoing access to these services. A recent report commissioned by Consumer Representatives to the National Association of Insurance Commissioners (NAIC) found significant issues with the implementation of current preventive services requirements and made several recommendations to improve oversight and enforcement of preventive services that we encourage the Department to consider.⁵

Pennsylvania should consider adding additional benefits, as have other states.⁶ We would suggest that as the Commonwealth moves forward with the benchmarking process, the Department should engage in a robust outreach process to stakeholders who can help identify any advancements in treatment, population health access, general consumer utilization trends, or other metrics that may be different today than they were at the time that the prior benchmark plan was selected. We would further encourage the Department to ensure that this outreach actively solicits input from stakeholders with expertise in the health needs of racial, ethnic, or other groups who typically face disparities in accessing health care or coverage.

With regard to that outreach, we would remind the Commonwealth that “expertise” includes not only professional or academic qualification, but also lived experience. We urge the Department to make every

¹ Essential Health Benefits: Best Practices in State Benchmark Selection. National Health Law Program: July 2022. Available at: https://content.naic.org/sites/default/files/national_meeting/hiwg-nhelp-ehb-paper-3.22.pdf

² Benchmark Plan Benefit Valuation Report. Wakely, for State of Colorado Division of Insurance: May 2021. Available at: <https://drive.google.com/drive/folders/16HGzRJYpPJ3KQNepXmNdMg7pq1hmTofa>

³ Preventive Services Covered by Private Health Plans under the Affordable Care Act. KFF: May 2023. Available at: <https://www.kff.org/womens-health-policy/fact-sheet/preventive-services-covered-by-private-health-plans/>

⁴ S. Dehkordy *et al.* Breast Screening Utilization and Cost Sharing Among Employed Insured Women Following the Affordable Care Act: Impact of Race and Income. *Journal of Women’s Health*: November 2019. Available at: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6862944/>

⁵ Preventive Services Coverage and Cost-Sharing Protections Are Inconsistently and Inequitably Implemented. Georgians for a Healthy Future on behalf of National Association of Insurance Commissioners Consumer Representatives: August 2023. Available at: https://healthyfuturega.org/ghf_resource/preventive-services-coverage-and-cost-sharing-protections-are-inconsistently-and-inequitably-implemented/

⁶ For examples, see Appendix A: https://content.naic.org/sites/default/files/national_meeting/hiwg-nhelp-ehb-paper-3.22.pdf

effort to involve individual patients and consumers in the stakeholder process, including soliciting feedback from existing enrollees as to any challenges they have faced in accessing care or treatment under the current benchmark.

Lastly, we urge the Department to examine not just the benefits included in the benchmark, but how those benefits may be utilized. We urge the Commonwealth to carefully consider whether the EHB benchmarking process provides an opportunity to ensure that procedural hurdles like prior authorization are not presenting inappropriate obstacles to patients and providers, especially for acute or critical services or treatments (where any delay in care access could present potentially life-threatening complications) or the most routine or recurring care (where ongoing or repetitive delay presents an especially onerous cumulative burden). For example, as part of their benchmarking process, Colorado specifically sought to eliminate carrier use of prior authorization for certain services. When used carefully, quickly, and sparingly, utilization management protocols such as prior authorization may be an effective lever for insurer oversight of their plan spending; however, recent evidence suggests that their increasing proliferation may instead serve as an undue barrier between patients and timely access to care that they are entitled to under their plans.⁷

We look forward to the next steps in the Commonwealth's EHB process, and thank you again for the opportunity to provide input at this stage. Please reach out to Ernie Davis at ernie.davis@lls.org with any questions.

Sincerely,

American Cancer Society Cancer Action Network
American Kidney Fund
American Lung Association
Arthritis Foundation
Cancer Support Community Greater Lehigh Valley
CancerCare
Child Neurology Foundation
Crohn's & Colitis Foundation
Cystic Fibrosis Foundation
Hemophilia Federation of America
Immune Deficiency Foundation
Leukemia & Lymphoma Society
National Bleeding Disorders Foundation
National Kidney Foundation
National Multiple Sclerosis Society
National Organization for Rare Disorders
National Patient Advocate Foundation
National Psoriasis Foundation
Susan G. Komen
The AIDS Institute

⁷ High Rates of Prior Authorization Denials by Some Plans and Limited State Oversight Raise Concerns About Access to Care in Medicaid Managed Care. Department of Health and Human Services Office of the Inspector General: July 2023. Available at: <https://oig.hhs.gov/oei/reports/OEI-09-19-00350.pdf>